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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/779,691

02/18/2004

F. Thomson Leighton

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EXAMINER

DAILEY, THOMAS J

ART UNIT

PAPER NUMBER

2452

NOTIFICATION DATE

DELIVERY MODE

02/11/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mail@davidjudson.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/779,691	<b>Applicant(s)</b> LEIGHTON ET AL.	
	<b>Examiner</b> Thomas J. Dailey	<b>Art Unit</b> 2452	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 19, 2009 has been entered.
2. Claims 1-8 are pending.

### ***Response to Arguments***

3. Applicant's arguments filed 1/19/2009 have been fully considered but they are not persuasive.
4. The applicant argues that the Skene reference (US Pub. No. 2001/0052016) cited in the previous Office action, is not valid prior art because the relied upon subject matter's 35 U.S.C. 102(e) filing date does not precede the instant application's filing date (7/20/2000). Specifically contending because Skene is the publication of application number 09/788,281 (filed 2/16/2001) which is a continuation in part of 09/456,815 (filed 12/13/1999), the cited portions of Skene ('281) must have support in the parent case ('815) in order to qualify as prior art and as such, the cited portions of Skene ('218) do not have support in the parent

case; therefore the cited portions of Skene ('218) have a 102(e) date of 2/16/2001, not 12/13/1999.

5. The examiner contends Skene is valid prior art with respect to the instant application. While the applicant's statement that portions of Skene, as a CIP of '281, must have support in the parent in order to obtain the benefit of that applications filing date is true; the examiner notes this argument is spurious as Skene ('281) also claims priority to provisional application number 60/182,812 (see Skene, [0001]) which has a filing date of 2/16/2000 that also precedes the instant application's filing date (7/20/2000). The examiner contends the relied upon portions of Skene (US Pub. No. 2001/0052016) are fully supported by provisional application number 60/182,812. See cited and attached document, provisional application number 60/182,812, entitled "Method and System For Name Server Load Balancing," specifically pages B-4 and B-5. Therefore, the cited portions of Skene, have at the latest, a 35 U.S.C. 102(e) date of 2/16/2000, not as the applicant contends 2/16/2001.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Skene et al (US Pub. No. 2001/0052016), hereafter "Skene."

8. As to claim 1, Skene discloses a method for Internet content delivery, comprising:

establishing a content delivery network at network locations, the content delivery network comprising a set of content servers for serving content resources wherein a subset of the set of content servers is located at an Internet data center (Abstract and [0044]);

for each Internet Protocol (IP) address block from which requests for content resources are expected to be received, generating a candidate list of Internet data centers to be used to service the requests for content resources ([0091], lines 1-6, requests are directed to content servers which are determined by any of a number of metrics and [0094], lines 6-13, discloses where the appropriate servers are selected based up IP address blocks), wherein the candidate list of Internet data centers is generated using (i) geographic information from one or more Internet registry databases identifying a geographic location of the IP address block ([0092], and [0094], lines 6-13), (ii) BGP route information collected from BGP peers participating in BGP (BGP) sessions ([0091], lines 4-

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11.), (iii) autonomous system (AS) information ([0094]), and (iv) data collected from one or more network performance metric tests ([0091], lines 1-6); and;

for the IP address block, selecting at least one of the Internet data centers from the candidate list to be used to service the requests for content resources, wherein the selected Internet data center is written into a network map ([0094], lines 6-13);

providing the network map to a domain name service (DNS) associated with the content delivery network ([0092], database storing network map is provided to domain name services); and

in response to a DNS query initiated from a client browser and received at the domain name service associated with the content delivery network, using the network map to identify an Internet data center to be used to service a request for a content resource ([0098]-[0099]).

9. As to claim 2, Skene discloses the selecting step is performed by executing an algorithm ([0091]).

10. As to claim 3, Skene discloses the algorithm is a multi-commodity bipartite, min-cost flow algorithm ([0091]).

11. As to claim 4, Skene discloses the flow algorithm uses a graph that includes a first set of nodes, and a second set of nodes, ([0094], lines 7-14, there are

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various subnets, each subnets is a set of nodes) wherein a node of the first set of nodes represents an IP address block and a node of the second set of nodes represents a single link at an Internet data center on the list of candidate data centers ([0094], lines 7-14).

12. As to claim 5, Skene discloses a node of the first set of nodes is connected to a node of the second set of nodes by a link that has a communication cost associated therewith ([0091], lines 1-6).

13. As to claim 6, Skene discloses the BGP sessions include internal BGP (iBGP) sessions ([0091], includes ASN and therefore iBGP (i.e. BGP running on an autonomous system network)).

14. As to claim 7, Skene discloses the content resources include a web resource (Abstract).

15. As to claim 8, Skene discloses the selected Internet data center is nearby the IP address block ([0091]).

### ***Conclusion***

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Dailey whose telephone number is

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571-270-1246. The examiner can normally be reached on Monday thru Friday;  
9:00am - 5:00pm.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on 571-272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. J. D./  
Examiner, Art Unit 2452

/Kenny S Lin/  
Primary Examiner, Art Unit 2452